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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 Richard Kern, an individual; and Lydia
12 Anne Koch p/k/a Lydia Lunch, an
13 individual,

14 Plaintiffs,

15 v.

16 Enfants Riches Déprimés, LLC, a
17 Delaware limited liability company;
18 Grailed, Inc., a Delaware corporation; and
DOES 1 through 10,
19 Defendants.

Case No.:

**PLAINTIFFS' COMPLAINT
FOR:**

- 1) **COPYRIGHT
INFRINGEMENT;**
- 2) **VICARIOUS AND/OR
CONTRIBUTORY
COPYRIGHT
INFRINGEMENT; AND**
- 3) **VIOLATION OF DMCA 17
U.S.C. § 1202**

Jury Trial Demanded

1 Plaintiffs Lydia Anne Koch and Richard Kern, by and through their
2 undersigned attorneys, hereby pray to this honorable Court for relief based on the
3 following:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
6 *et seq.*

7 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
8 1338 (a) and (b) as well as diversity jurisdiction under 28 U.S.C. § 1332.

9 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and
10 1400(a) in that this is the judicial district in which a substantial part of the acts and
11 omissions giving rise to the claims occurred.

12 **PARTIES**

13 4. Plaintiff, Richard Kern (“Kern”), is an individual residing in New York,
14 New York.

15 5. Plaintiff, Lydia Anne Koch, professionally known as Lydia Lunch
16 (“Lunch”) (together with Kern, “Plaintiffs”), is an individual residing in Brooklyn,
17 New York.

18 6. Defendant Enfants Riches Déprimés, LLC (“ERD”) is a Delaware
19 limited liability company, with its primary place of business located at 2432 E 8th
20 Street, Los Angeles, California 90021, and is the owner and operator of the website
21 www.EnfantsRichesDeprimes.com.

22 7. Defendant Grailed, Inc. doing business as GRAILED (“Grailed”) is a
23 Delaware corporation with its primary place of business located at 131 Spring Street,
24 6th Floor, New York, New York, is the owner and operator of the website
25 www.grailed.com and is doing business in and with the state of California including
26 in this judicial district.

27 8. Plaintiffs are informed and believe and thereon allege that Defendants
28 DOES 1 through 10, inclusive (collectively with ERD and Grailed, “Defendants”),

1 are other parties not yet identified who have infringed Plaintiffs' copyrights, have
 2 contributed to the infringement of Plaintiffs' copyrights, or have engaged in one or
 3 more of the wrongful practices alleged herein. The true names, whether corporate,
 4 individual or otherwise, of Defendants 1 through 10, inclusive, are presently
 5 unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names,
 6 and will seek leave to amend this Complaint to show their true names and capacities
 7 when same have been ascertained.

8 9. Plaintiffs are informed and believe and thereon allege that at all times
 9 relevant hereto, each of the Defendants was the agent, affiliate, officer, director,
 10 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
 11 at all times acting within the scope of such agency, affiliation, alter-ego relationship
 12 and/or employment; and actively participated in or subsequently ratified and/or
 13 adopted each of the acts or conduct alleged, with full knowledge of all the facts and
 14 circumstances, including, but not limited to, full knowledge of each violation of
 15 Plaintiffs' rights and the damages to Plaintiffs proximately caused thereby.

16 **FACTUAL BACKGROUND**

17 ***Plaintiff Richard Kern***

18 10. Richard Kern ("Kern") is an internationally renowned American
 19 underground filmmaker, writer, artist, and photographer. His initial breakthrough
 20 came in the late 1980s New York City underground arts and film scene with his
 21 experimental films like *The Right Side of My Brain* and *Fingered*, which featured
 22 personalities of the time such as Lydia Lunch, David Wojnarowicz, Sonic Youth,
 23 Kembra Pfahler, Karen Finley, and Henry Rollins.

24 11. Kern's art career began with a series of self-produced magazines that
 25 featured art, poetry, photography, and fiction by himself and several friends. These
 26 hand-stapled and photocopied "zines" expressed the bleakness of New York City's
 27 East Village in the early 1980s. This phase of Kern's career lasted from late 1979 to
 28 around 1983. In 1985, he directed a video for the Sonic Youth song *Death Valley '69*,

1 this led to more music video work, including videos for King Missile for the song
2 *Detachable Penis* and Marilyn Manson for the song *Lunchbox*. Kern has shot and
3 directed over 20 different films and music videos and is the author of over 30 books.

4 12. In the 1990s, Kern turned almost exclusively to still photography. He
5 has frequently shot celebrity portraits for international publications. His portfolio
6 includes photographs of Kanye West, Kim Kardashian, Nick Nolte, and many others.
7 Since 1995 he has published over 20 different books of photography.

8 13. At issue in this case is Kern's photography and specifically two stills
9 from two of his early films. The image titled *Lung with Lizard* was taken during the
10 filing of the movie *Submit to Me Now* (1987). The image titled *Sally Smokes* was
11 taken during filing of the movie *The Right Side Of My Brain* (1984). Collectively the
12 photography *Lung with Lizard* and *Sally Smokes* are defined as "Subject
13 Photographs."

14 14. Kern has widely publicly displayed and distributed the Subject
15 Photographs, including by licensing the Subject Photographs for sale on products
16 including garments and prints.

17 15. Kern is the sole and exclusive owner of the Subject Photographs and has
18 registered the Subject Photographs with the United States Copyright Office. True and
19 correct reproductions of the Subject Photographs are depicted below:

20 ///

21 ///

22 ///

Lung with Lizard



Sally Smokes



Plaintiff Lydia Lunch

16. Lunch is an internationally renowned American singer, poet, writer, artist and actress. Her initial breakthrough came in the late 1970s New York City underground arts and music scene with her first band, Teenage Jesus and the Jerks. Her work as an actress and writer for films for legendary filmmakers Beth B and Scott B, and Kern established her as a visionary artist of the No Wave and Transgressive Cinema movements.

17. Lunch has recorded over 80 albums, including rock, experimental music, and spoken word and has consistently toured the United States and internationally over the past 40 years performing her music and exhibiting her art. Her books have been translated into 11 different languages. Lunch is considered a major influence on the “grunge” rock music movement, and she was recently featured in *The War is Never Over*, a Beth B documentary focusing on Ms. Lunch’s life and career. The film received critical praise by The New York Times, Forbes Magazine, and The Independent (“Critic’s Pick”).

18. In 2022, Lunch was the third artist to be awarded the prestigious Center for Popular Music Fellowship Award from the University of Tennessee.

19. In 1987, Lunch released a performance arts album titled *Stinkfist*, which included an original track titled *Meltdown Oratorio* performed by Lunch and for which Lunch wrote the lyrics (“Subject Lyrics”).

20. Prior to the acts complained of herein, Lunch registered *Stinkfist* and the works included on the album, including without limitation *Meltdown Oratorio* and its lyrics, with the United States Copyright Office.

21. *Stinkfist* and *Meltdown Oratorio* have been widely disseminated through sale and streaming on major platforms such as YouTube, Amazon, Spotify, and more.

22. A true and correct reproduction of relevant portions of the Subject Lyrics as they appear in *Meltdown Oratorio* are depicted below.

Subject Lyrics

As Displayed on the Inside Sleeve of *Stinkfist*

MELTDOWN ■ Lyrics by LYDIA LUNCH © 1987 ■ They OUTLAWED EVERYTHIN
that spelt PLEASURE ■ Didn't want you to even THINK ABOUT IT ■ Wanted you to
FORGET EVERYTHING ■ About how GOOD IT FELT ■ It was all so OBVIOUS WHY
...too DANGEROUS ■ And WHAT exactly WAS GUNNA HAPPEN ■ It was EASY, SO
EASY for them to INFILTRATE ■ YOU BOUGHT IT ■ YOU EAT IT ■ It wasn't met with
much RESISTANCE ■ REVOLT didn't come til much, much later ■ After the DAMAGE had
already been done ■ AFTER THE ACCIDENT ■ It all happened so quickly ... Or did it
take FOREVER... I LOST TRACK OF TIME... GOT SWALLOWED UP in the RUSH, the
PUSH, the PANIC, the PAIN, the POISON ■ DYING and trying to stay alive. ... I'm driv-
ing 365 m. p. h. into a brick abutment. ... The ROAD to NOWHERE is covered with SHIT,
with DRUNKS, with DRUGS with FUCK, IT SUCKS ■ I see 452 mile long forest fires that
your plane crashes into at 2 in the morning. ... I laugh at shopping mall murders, abortion
clinics, earthquakes and the PLAGUE. ... I'm living in a NUTHOUSE on the OUTSKIRTS of
a PIGFARM ■ I was lying when I said I was lying ... I'M NOT EASING INTO ANY-
THING ■ I DON'T WANNA EASE IN ■ I see BOMBS BURSTING IN AIR ... RIFLES
RICOCHETTING OFF THE BELLIES OF PREGNANT WOMEN ... HANDICAPPED
CHILDREN POISONED ON A SCHOOLBUS, CRUMBLING CITIES POLLUTED BEYOND
RECOGNITION ■ CARCINOGENIC HALLUCINATIONS... TERMINATIONS ■ Where all
THE KILLERS ARE HEROS, I'm the QUEEN of CRIPPLES, ONE ARMED BANDITS, ONE-
EYED JACKS & DEAD CATS ■ The ambulance comes crashing into my DAYDREAMS
reminding me of the way it used to be ... HOW GOOD IT USED TO FEEL ... HACKSAWS
JIMMYING FOR POSITION ... THE CRACK OF BAT AGAINST BONE ■ THE SMELL OF
BURNING RUBBER, BROKEN GLASS, BLOOD, MUDSLICKS, SLAGHEAPS, BLISTER-
ING FEVERS, DELIRIUM, SLOT MACHINES, SUBMACHINEGUNS ■ THE CIRCLE OF
ABUSE ■ I'M FORCED INTO IT ■ I'M FORCED INTO A REAL LIVE MIND FUCK ■ I
NEED IT, I NEED IT, I WANT IT ■ I'M TRAPT INSIDE THE PERFECT TORTURE
CHAMBER ■ I'M THROWN INTO A MENTAL INSTITUTION FOR FAMOUS MOVIE
STARS DEAD BY THE '60's... WISH YOU WERE THERE ■ WISH YOU WERE THERE
■ I WISH I WAS SOMEWHERE ELSE ■ I WISH I WAS SOMEWHERE ELSE ■ I WISH I
WAS SOMEWHERE ELSE ■ STUPID PEOPLE OVERPOPULATE THIS PLACE ■ and THE
STEEL WALLS COME CRASHING IN...

Text Excerpts of Subject Lyrics

They outlawed everything that spelled pleasure.

Didn't want you to even think about it.

Wanted you to forget everything about how good it felt.

It was all so obvious why...too dangerous.

And what exactly was going to happen.

It was easy, so easy.

It wasn't met with much resistance.

Revolt didn't come til much, much later.

After the damage had already been done.

I see bombs bursting in air, rifles ricocheting off the bellies of pregnant women,
 handicapped children poisoned on a school bus, crumbling cities polluted beyond
recognition.

Carcinogenic hallucinations, terminations.

Where all the killers are heroes, I'm the Queen of cripples, one armed bandits, one
 eyed jacks and dead cats.

The ambulance comes crashing into my **daydreams...**
reminding me of the way it used to be
 how good it used to be
how good it used to feel
hacksaws jimmying for position
the crack of bat against bone
the smell of burning rubber
broken glass, blood, mud slicks, slag heaps
 blistering fevers, fly traps
 delirium
 slot machines, submachine guns

CLAIMS RELATED TO PLAINTIFFS' COPYRIGHTED WORK

23. ERD describes itself as follows: Unisex label Enfants Riches Déprimés is the luxury brand of artist and designer Henri Alexander Levy. His self-described 'elitist, nihilistic couture' proposes an unflinching collision of louche first-wave punk attitude and deconstructionist garment design, resulting in one of the most bitter pills available among the contemporary fashion pharmacopoeia.

24. Grailed is an online clothing and apparel retailer and marketplace that claims to offer "authenticated pieces from the world's top brands." Grailed affirms on its commercial website, "www.grailed.com," that it "assess[es] listings before they hit the feed" using a team of "human moderators" who are the "driving force behind [its] authentication strategy."

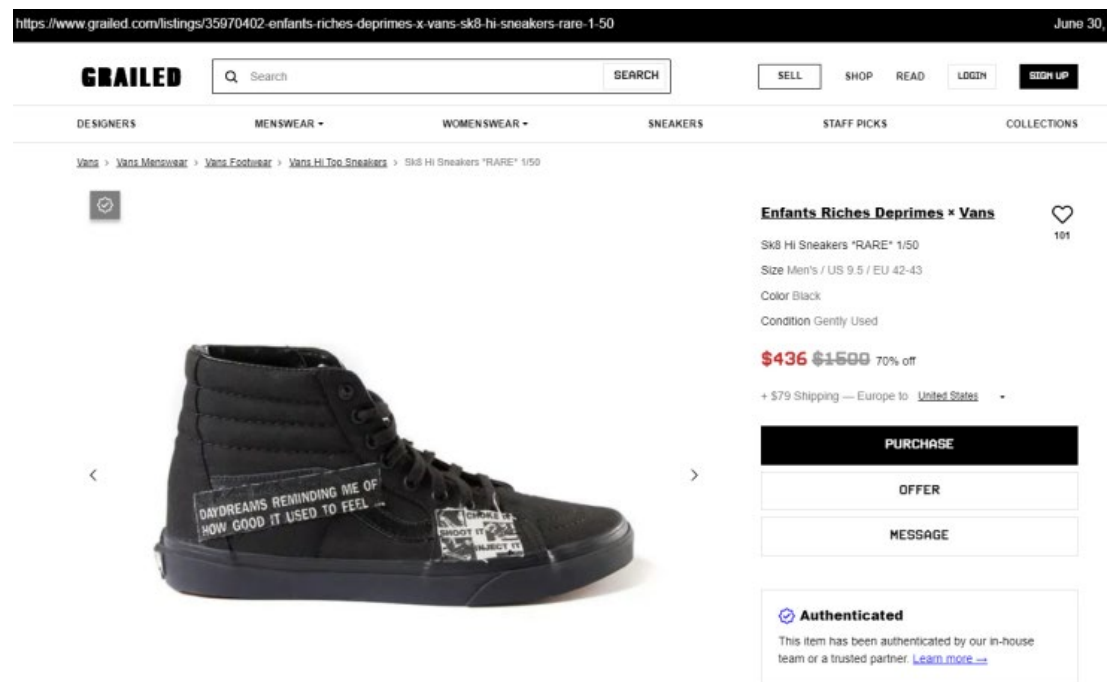
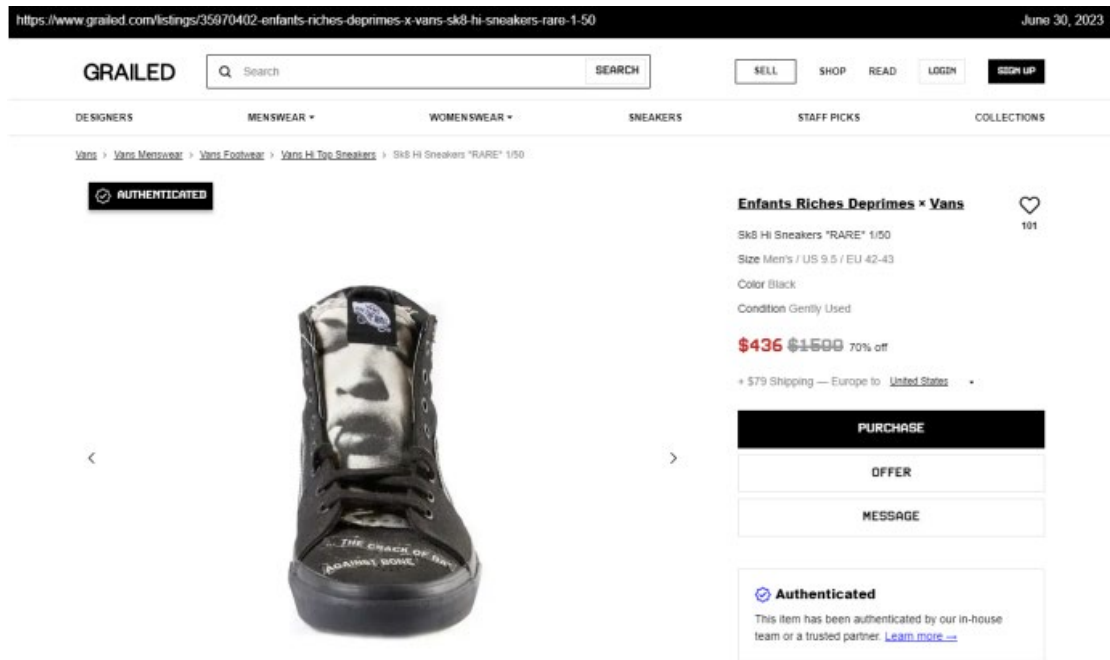
25. ERD is listed designer and seller on Grailed's website, with more than 1,000 active product listings. Grailed's website features a page dedicated to ERD and promoting their products to customers.

26. On information and belief, Plaintiffs allege that following Plaintiffs' widespread dissemination of the Subject Photographs and Subject Lyrics as described above, Defendants, and each of them, created, sold, manufactured, caused to be manufactured, imported and/or distributed garments incorporating, in whole or imported, the Subject Photographs and Subject Lyrics ("Offending Products"). The

Offending Products are displayed, offered for sale, and sold on Grailed's website and are sold under ERD's name and bear labels and tags displaying "Enfants Riches Deprimes" and "ERD," indicating they were manufactured by or for ERD. True and correct screen captures of the Offending Products are depicted below:

Offending Products

ERD x Vans




https://www.grailed.com/listings/35970402-enfants-riches-deprimes-x-vans-sk8-hi-sneakers-rare-1-50 June 30, 2023

GRAILED Search SELL SHOP READ LOGIN SIGN UP

DESIGNERS MENSWEAR WOMENSWEAR SNEAKERS STAFF PICKS COLLECTIONS

Vans > Vans Menswear > Vans Footwear > Vans Hi Top Sneakers > Sk8 Hi Sneakers "RARE" 1/50



Enfants Riches Deprimes x Vans 101

Sk8 Hi Sneakers "RARE" 1/50
Size Men's / US 9.5 / EU 42-43
Color Black
Condition Gently Used

\$436 ~~\$1500~~ 70% off
+ \$79 Shipping — Europe to United States

PURCHASE

OFFER

MESSAGE

Authenticated
This item has been authenticated by our in-house team or a trusted partner. [Learn more](#)

kiraw ★★★★★ 3 Reviews
45 Transactions • 2 items for sale

FOLLOW

ERD T-Shirt


https://www.grailed.com/listings/22977527-enfants-riches-deprimes-t-shirt?g_aqd=Listing_production&g_aqd=53a3f696523a2b6618b16b57b3ca0a June 30, 2023

GRAILED Search SELL SHOP READ LOGIN SIGN UP

DESIGNERS MENSWEAR WOMENSWEAR SNEAKERS STAFF PICKS COLLECTIONS

Sorry, this listing is no longer available.

Enfants Riches Deprimes > Enfants Riches Deprimes Menswear > Enfants Riches Deprimes Tees > Enfants Riches Deprimes Short Sleeve T-Shirts > T-shirt



Enfants Riches Deprimes 62

T-shirt
Size Men's / US M / EU 48-50 / 2
Color White
Condition Gently Used

Sold Price Including Shipping
\$285

This item sold. Make an offer to persuade the buyer to sell it to you!

MAKE AN OFFER

SELL YOURS

Authenticated
This item has been authenticated by our in-house team or a trusted partner. [Learn more](#)

savage ★★★★★ 13 Reviews
62 Transactions • 2 items for sale



GRAILED

SEARCH

SELL

SHOP

READ

LOGIN

SIGN UP

DESIGNERS

MENSWEAR

WOMENSWEAR

SNEAKERS

STAFF PICKS

COLLECTIONS

[Enfants Riches Deprimes](#) > [Enfants Riches Deprimes Menswear](#) > [Enfants Riches Deprimes Tops](#) > [Enfants Riches Deprimes Shirts Button Up](#) > [Enfants Riches Deprimes 17FW Asian Woman Black Wool Shirt](#)

Enfants Riches Deprimes

118

Enfants Riches Deprimes 17FW Asian Woman Black Wool Shirt

Size Men's / US S / EU 44-46 / 1

Color Black

Condition Gently Used

\$729 ~~\$900~~ 19% off

OFFER

MESSAGE

Authenticated

This item has been authenticated by our in-house team or a trusted partner. [Learn more](#)

MoonStone

4 Reviews

23 Transactions

2 items for sale

FOLLOW

<https://www.grailed.com/listings/45722896-enfants-riches-deprimes-erd-17fw-asian-prostitute-patch-wool-shirt>

SEARCH

SELL

SHOP

READ

LOGIN

SIGN UP

DESIGNERS

MENSWEAR

WOMENSWEAR

SNEAKERS

STAFF PICKS

COLLECTIONS

[Enfants Riches Deprimes](#) > [Enfants Riches Deprimes Menswear](#) > [Enfants Riches Deprimes Tops](#) > [Enfants Riches Deprimes Shirts Button Up](#) > [ERD 17FW Asian Prostitute Patch Wool Shirt](#)

Enfants Riches Deprimes

98

ERD 17FW Asian Prostitute Patch Wool Shirt

Size Men's / US L / EU 52-54 / 3

Color Black

Condition Gently Used

\$800 ~~\$900~~ 11% off

+ \$10 Shipping — US to [United States](#)

PURCHASE

OFFER

MESSAGE

Authenticated

This item has been authenticated by our in-house team or a trusted partner. [Learn more](#)

spint

72 Reviews

179 Transactions

25 items for sale

Trusted Seller

Quick Responder

Speedy Shipper


FOLLOW

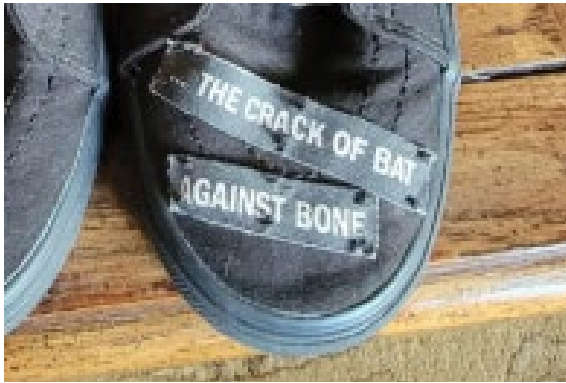
12

COMPLAINT



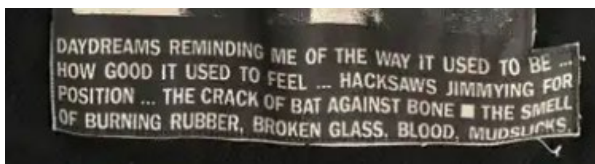
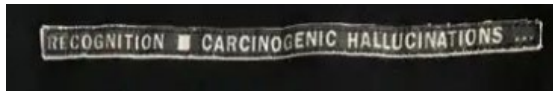
27. A true and correct comparison of exemplars of the Offending Products with corresponding exemplars of the Subject Lyrics and Subject Photographs (collectively, “Subject Works”) is depicted below:

Offending Products Exemplar	Subject Works
	<p>The ambulance comes crashing into my daydreams... reminding me of the way it used to be how good it used to be how good it used to feel</p>



hacksaws jimmying for position
the crack of bat against bone





recognition.

Carcinogenic hallucinations,

terminations.

Where all the killers are heroes, I'm the Queen of cripples, one armed bandits, one eyed jacks and dead cats.

The ambulance comes crashing into my **daydreams...**

reminding me of the way it used to be

how good it used to be

how good it used to feel

hacksaws jimmying for position

the crack of bat against bone

the smell of burning rubber

broken glass, blood, mud slicks, slag
heaps





**They outlawed everything that spelled
pleasure.
Didn't want you to even think about
it.
Wanted you to forget everything
about how good it felt.**

28. The above comparison demonstrates that the images and lyrics appearing on the Offending Products are strikingly similar, if not virtually identical, to the Subject Photographs and Subject Lyrics.

29. On information and belief, ERD has sold the above Offending Products on its website and to retailers including Defendants GRAILED who have in turn sold Offending Products to the public.

30. Defendants have made unauthorized uses and displays of the Artwork in connection with the advertising and sales Offending Products by, without limitation,

1 displaying the Offending Products on their respective websites and social media
2 accounts as shown below.

3 31. At no point have Lunch or Kern in any way authorized Defendants, or
4 any of them, to exploit the Subject Works as described herein.

5 32. The Subject Lyrics were routinely published, distributed, and displayed
6 with accreditation to Lunch as the author and owner, including on the album sleeves,
7 CD booklets, and other packaging for *Stinkfist*.

8 33. The Subject Photographs were routinely published, distributed, and
9 displayed with accreditation to Kern as the author and owner, including through sale
10 of products bearing the Subject Photographs on Kern's website,
11 "www.richardkern.com," and in public exhibitions and articles.

12 34. Exemplars of the Subject Works being displayed with accreditation
13 information are depicted below

Subject Lyrics with Accreditation

MELTDOWN Lyrics by LYDIA LUNCH 1987 They OUTLAWED EVERYTHING
that... PLEASURE Didn't want... even THINK ABOUT IT Wanted you to
FORGET EVERYTHING about how GOOD IT FELT It was all so OBVIOUS WHY
...too DANGEROUS and WHAT exactly WAS GUNNA HAPPEN It was EASY, SO
EASY for them to INFILTRATE YOU BOUGHT IT YOU EAT EAT IT It wasn't mat with
much RESISTANCE REVOLT didn't come til much, much later After the DAMAGE had
already been done AFTER THE ACCIDENT It all happened so quickly...Or did it
take FOREVER...I LOST TRACK OF TIME...GOT SWALLOWED UP in the RUSH, the
PUSH, the PANIC, the PAIN, the POISON DYING and trying to stay alive...I'm driving
365 m.p.h. into a brick abutment...the ROAD to NOWHERE is covered with SHIT,
with DRUNKS, with DRUGS with FUCK, IT SUCKS I see 452 mile long forest fires that
your plane crashes into at 2 in the morning...I laugh at shopping mall murders, abortion
clinics, earthquakes and the PLAGUE...I'm living in a NUTHOUSE on the OUTSKIRTS of
a PIGFARM I was lying when I said I was lying...I'M NOT EASING INTO ANYTHING
I DON'T WANNA EASE IN I see BOMBS BURSTING IN AIR...RIFLES
RICOCHETING OFF THE BELLIES OF PREGNANT WOMEN...HANDICAPPED
CHILDREN POISONED ON A SCHOOLBUS, CRUMBLING CITIES POLLUTED BEYOND
RECOGNITION CARCINOGENIC HALLUCINATIONS...TERMINATIONS Where all
THE KILLERS ARE HEROES, I'm the QUEEN of CRIPPLES, ONE ARMED BANDITS, ONE-
EYED JACKS & DEAD CATS The ambulance comes crashing into my DAYDREAMS
reminding me of the way it used to be...HOW GOOD IT USED TO FEEL...HACKSAWS
JIMMYING FOR POSITION...THE CRACK OF BAT AGAINST BONE THE SMELL OF
BURNING RUBBER, BROKEN GLASS, BLOOD, MUDSLICKS, SLAGHEAPS, BLISTERING
FEVER, DELIRIUM, SLOT MACHINES, SUBMACHINEGUNS THE CIRCLE OF
ABUSE I'M FORCED INTO IT I'M FORCED INTO A REAL LIVE MINDFUCK I
NEED IT, I NEED IT, I WANT IT I'M TRAPT INSIDE THE PERFECT TORTURE
CHAMBER I'M THROWN INTO A MENTAL INSTITUTION FOR FAMOUS MOVIE
STARS DEAD BY THE '60'S...WISH YOU WERE THERE WISH YOU WERE THERE
I WISH I WAS SOMEWHERE ELSE I WISH I WAS SOMEWHERE ELSE I WISH I
WAS SOMEWHERE ELSE STUPID PEOPLE OVERPOPULATE THIS PLACE and
THE STEEL WALLS COME CRASHING IN...

MELTDOWN ■ Lyrics by **LYDIA LUNCH** © 1987 ■ They **OUTLIVED EVERYTHING** that spelt **PLEASURE** ■ Didn't want you to even **THINK ABOUT IT** ■ Wanted you to **FORGET EVERYTHING** ■ About how **GOOD IT FELT** ■ It was all so **OBVIOUS WHY** ...too **DANGEROUS** ■ And **WHAT** exactly **WAS GUNNA HAPPEN** ■ It was **EASY, SO EASY** for them to **INFILTRATE** ■ **YOU BOUGHT IT** ■ **YOU EAT IT** ■ It wasn't met with much **RESISTANCE** ■ **REVOLT** didn't come til much, much later ■ After the **DAMAGE** had already been done ■ **AFTER THE ACCIDENT** ■ It all happened so quickly... Or did it take **FOREVER...** I **LOST TRACK OF TIME...** GOT **SWALLOWED UP** in the **RUSH**, the **PUSH**, the **PANIC**, the **PAIN**, the **POISON** ■ **DYING** and trying to stay alive... I'm driving 365 m.p.h. into a brick abutment... The **ROAD to NOWHERE** is covered with **SHIT**, with **DRUNKS**, with **DRUGS** with **FUCK, IT SUCKS** ■ I see 452 mile long forest fires that your plane crashes into at 2 in the morning... I laugh at shopping mall murders, abortion clinics, earthquakes and the **PLAGUE...** I'm living in a **NUTHOUSE** on the **OUTSKIRTS** of a **PIGFARM** ■ I was lying when I said I was lying... I'M **NOT EASING INTO ANYTHING** ■ I **DON'T WANNA EASE IN** ■ I see **BOMBS BURSTING IN AIR...** **RIFLES RICOCHETTING OFF THE BELLIES OF PREGNANT WOMEN...** **HANDICAPPED CHILDREN POISONED ON A SCHOOLBUS, CRUMBLING CITIES POLLUTED BEYOND RECOGNITION** ■ **CARCINOGENIC HALLUCINATIONS...** **TERMINATIONS** ■ Where all **THE KILLERS ARE HEROS**, I'm the **QUEEN of CRIPPLES, ONE ARMED BANDITS, ONE-EYED JACKS & DEAD CATS** ■ The ambulance comes crashing into my **DAYDREAMS** reminding me of the way it used to be... **HOW GOOD IT USED TO FEEL...** **HACKSAWS JIMMYING FOR POSITION...** **THE CRACK OF BAT AGAINST BONE** ■ **THE SMELL OF BURNING RUBBER, BROKEN GLASS, BLOOD, MUDSLICKS, SLAGHEAPS, BLISTERING FEVERS, DELIRIUM, SLOT MACHINES, SUBMACHINEGUNS** ■ **THE CIRCLE OF ABUSE** ■ I'M **FORCED INTO IT** ■ I'M **FORCED INTO A REAL LIVE MIND FUCK** ■ I **NEED IT, I NEED IT, I WANT IT** ■ I'M **TRAPT INSIDE THE PERFECT TORTURE CHAMBER** ■ I'M **THROWN INTO A MENTAL INSTITUTION FOR FAMOUS MOVIE STARS DEAD BY THE '60's...** **WISH YOU WERE THERE** ■ **WISH YOU WERE THERE** ■ I **WISH I WAS SOMEWHERE ELSE** ■ I **WISH I WAS SOMEWHERE ELSE** ■ I **WISH I WAS SOMEWHERE ELSE** ■ **STUPID PEOPLE OVERPOPULATE THIS PLACE** ■ and **THE STEEL WALLS COME CRASHING IN...**

Subject Photographs with Accreditation

RICHARD KERN

RICHARD KERN ABOUT PHOTOGRAPHS VIDEOS CONTACT STORE

← BACK TO CLOTHING

LUNG LEG W/ LIZARD WINDBREAKER (2023)

\$150.00

Lung Leg with a Lizard Jacket for Hysterie Glamour (Japan) - part of their "Richard Kern" collection.

high quality black nylon, button up windbreaker - sells for \$350 in Japan

Size:

Select Size ▼

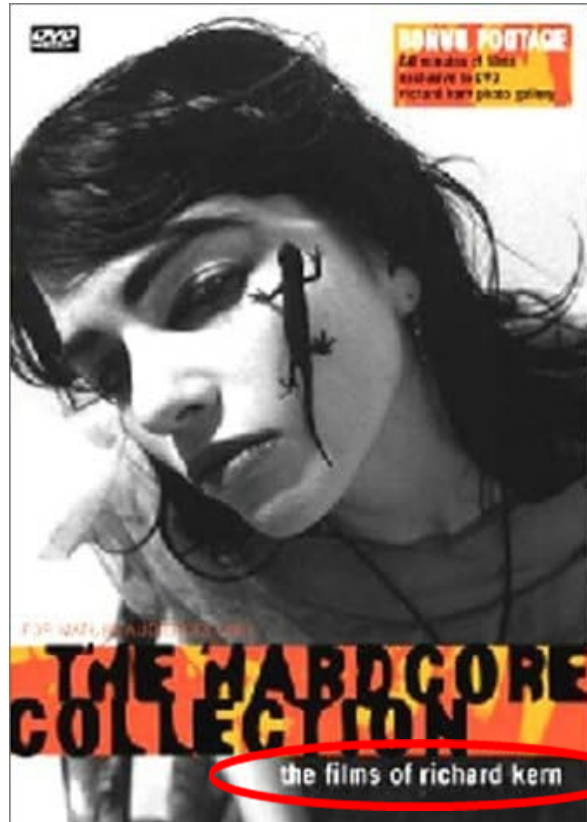
Quantity:

1

ADD TO CART

Share





**RICHARD KERN "NEW YORK GIRLS
REVISITED" EXHIBITION AT
MARLBOROUGH BROOME, NEW
YORK**

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Plaintiffs Against All Defendants, and Each)

35. Plaintiffs repeat, reallege and incorporate herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

36. On information and belief, Defendants had access to the Subject Photographs through the widespread release of the film *Submit to Me Now* which was released for sale on the following products: *Hardcore Vol. 2* (VHS 1992), *The Hardcore Collection* (DVD 1999), the *Hardcore Collection Re-mastered* (Blu-ray 2012). The Artwork was also published in the following art book publications: *Richard Kern New York Girls* (1995), *XXGirls* (1996), *New York Girls* (1997), *Kern Noir* (2002), and *New York Girls 20th Anniversary* (2015). These films and books were all released and published prior to the infringement at issue. Access is further established because the images on the Offending Products are virtually identical to the Subject Photographs.

37. On information and belief, Defendants had access to the Subject Lyrics through the widespread release of *Stinkfist* and *Meltdown Oratorio*, including multiple physical releases and streaming on popular platforms including YouTube, Spotify, and Amazon. *Stinkfist* and *Meltdown Oratorio* were both released prior to the infringements at issue. Access is further evidenced by the Subject Lyrics exact reproduction on the Offending Products.

38. Plaintiffs are informed and believe and thereon allege that one or more of the Defendants manufacture garments and/or are garment vendors. Plaintiffs are further informed and believes and thereon alleges that said Defendants, and each of them, has an ongoing business relationship with Defendant retailers, and each of them, and supplied Offending Products to said retailers, which garments infringed the Subject Works in that said garments feature unauthorized artwork that was identical or substantially similar to the Subject Works, or were illegal modifications thereof.

1 39. Plaintiffs are informed and believe and thereon allege that Defendants,
2 and each of them, infringed Plaintiffs' copyrights by creating, making and/or
3 developing directly infringing and/or derivative works from the Subject Works and
4 by producing, distributing and/or selling Offending Products, and displaying images
5 of same, through a nationwide network of retail stores, catalogues, and through on-
6 line platforms.

7 40. Due to the aforementioned Defendants', and each of their, acts of
8 infringement, Plaintiffs have suffered damages in an amount to be established at trial.

9 41. Defendants, and each of them, have obtained direct and/or indirect
10 profits from their infringement of the Subject Works as alleged herein. As such,
11 Plaintiffs are entitled to disgorgement of Defendants' profits directly and indirectly
12 attributable to Defendants' infringement of her rights in the Artwork in an amount to
13 be established at trial.

14 42. Plaintiffs are informed and believes and thereon alleges that Defendants,
15 and each of them, have committed copyright infringement with actual or constructive
16 knowledge of Plaintiffs' rights such that said acts of copyright infringement were,
17 and continue to be, willful, intentional and malicious.

18 **SECOND CLAIM FOR RELIEF**

19 (For Vicarious and/or Contributory Copyright Infringement – Plaintiffs Against All
20 Defendants, and Each)

21 43. Plaintiffs repeat, reallege and incorporate herein by reference as though
22 fully set forth the allegations contained in the preceding paragraphs of this
23 Complaint.

24 44. Plaintiffs are informed and believes and thereon allege that Defendants
25 knowingly induced, participated in, aided and abetted in and profited from the illegal
26 reproduction and distribution of the Subject Works as alleged hereinabove.

27 45. Plaintiffs are informed and believe and thereon allege that Defendants,
28 and each of them, are vicariously liable for the infringement alleged herein because

1 they had the right and ability to supervise the infringing conduct and because they
2 had a direct financial interest in the infringing conduct, including by their ability to
3 direct and/or control the manufacture, distribution, sale, and resale of the Offending
4 Products and profiting from same.

5 46. By reason of Defendants', and each of their, acts of contributory and
6 vicarious infringement as alleged above, Plaintiffs have suffered and will continue to
7 suffer substantial damages in an amount to be established at trial, as well as
8 additional general and special damages in an amount to be established at trial.

9 47. Due to Defendants' acts of copyright infringement as alleged herein,
10 Defendants, and each of them, have obtained direct and indirect profits they would
11 not otherwise have realized but for their infringement of Kern's rights in the Artwork.
12 As such, Kern is entitled to disgorgement of Defendants' profits directly and
13 indirectly attributable to their infringement of her rights in the Artwork, in an amount
14 to be established at trial.

15 48. Plaintiffs are informed and believe and thereon allege that Defendants,
16 and each of their, conduct as alleged herein was willful, reckless, and/or with
17 knowledge, subjecting Defendants, and each of them to enhanced statutory damages
18 and/or a preclusion from deducting certain overhead when calculating disgorgeable
19 profits.

20 **THIRD CLAIM FOR RELIEF**

21 (For Violations of 17 U.S.C. §1202 – Plaintiffs Against all Defendants, and Each)

22 49. Plaintiffs repeat, re-allege, and incorporate herein by reference as though
23 fully set forth, the allegations contained in the preceding paragraphs of this
24 Complaint.

25 50. The Subject Works were routinely published with copyright
26 management information (“CMI”), as that phrase is used in 17 USC § 1202.
27 Plaintiffs’ CMI included, without limitation, their names, a copyright notice symbol,
28 and other indicia of authorship and attribution information.

1 51. On information and belief, Plaintiffs allege that Defendants, and each of
2 them, intentionally removed their CMI in violation of 17 USC § 1202(b) before
3 copying, reproducing, distributing, and displaying the Subject Works on Defendants
4 websites and on the Offending Products. Defendants failed to publish the Subject
5 Works with proper indicia of authorship and removed or hid CMI which would
6 indicate Plaintiffs' ownership and authorship of the Subject Works.

7 52. On information and belief, Plaintiffs allege that Defendants, and each of
8 them, did distribute, published, and otherwise publicly display copies of Subject
9 Works knowing that copyright management information has been removed or altered
10 without authority of Plaintiffs or the law, knowing, or, with respect to civil remedies
11 under 17 USC § 1203, having reasonable grounds to know, that it will induce, enable,
12 facilitate, or conceal an infringement of any right under this title.

13 53. On information and belief, Plaintiffs alleges that Defendants, and each
14 of them, in violation of 17 USC § 1202(a), knowingly and with the intent to induce,
15 enable, facilitate, or conceal infringement provided false copyright management
16 information when they added their own logos and names, bylines, and attribution to
17 the Subject Works within the Offending Products and on Defendants' websites.

18 54. On information and belief, Plaintiffs allege that Defendants, and each of
19 them knew that they were providing false copyright management information to their
20 copies of the Subject Works and distributing copyright management information that
21 was false at the time it distributed its unauthorized copies of the Subject Works.

22 55. Due to Defendants acts of infringement, as alleged herein, Plaintiffs
23 have suffered and will seek to recover general and special damages in an amount to
24 be established at trial, and/or statutory damages and attorneys' fees as provided in 17
25 USC § 1203.

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PRAYER FOR RELIEF

Wherefore, Plaintiffs prays for judgment as follows:

- a. That Defendants, and each of them, and their respective agents and servants be enjoined from displaying, importing, manufacturing, distributing, offering for sale, selling or otherwise trafficking in any product that infringes Plaintiffs' copyright in the Subject Works;
- b. That Defendants, and each of them, and their respective agents and servants be enjoined from using or displaying the Subject Works in any manner.
- c. That Plaintiffs be awarded all direct and indirect profits of Defendants, and each of them, plus all losses of Plaintiffs, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq., and § 1202 et seq.;
- d. That Plaintiffs be awarded their attorneys' fees as available under the Copyright Act U.S.C. § 101 et seq, and § 1203 et seq.;
- e. That Plaintiffs each be awarded pre-judgment interest as allowed by law;
- f. That Plaintiffs each be awarded the costs of this action; and
- g. That Plaintiffs each be awarded such further legal and equitable relief as the Court deems proper.

Plaintiffs demand a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Dated: September 21, 2023

DONIGER/BURROUGHS

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs
Frank R. Trechsel
Attorneys for Plaintiff